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ABSTRACT

Section 622.10 of the Code of Iowa provides that no qualified school guidance counselor shall be allowed, in giving testimony, to disclose any confidential communications entrusted to the counselor by a pupil or his or her parents or guardian while the counselor is in a professional counseling role. In order for this privilege to apply, four elements must exist for the school guidance counselor who has obtained information: (1) state certification of the counselor; (2) information obtained through employment as a counselor; (3) confidential communication properly entrusted to the counselor by pupil, parent, or guardian; and (4) communication necessary and proper to enable the counselor to perform his or her professional duties. Accordingly, this document provides guidelines and rules for counselors to comply with this provision. Included are stipulations against the presence of third parties in counseling sessions where the student reasonably expects confidentiality; general rules for school counselors testifying in court; and rules for written authorization from the student for release of information. A student authorization form for release of information is attached. (TE)

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SCHOOL GUIDANCE COUNSELORS AND CONFIDENTIAL COMMUNICATIONS

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I. The Statute

Section 622.10 of the Code of Iowa provides in pertinent part as follows:

> No qualified school guidance counselor, who has met the certification and approval standards of the department of education as provided in section 256.11, subsection 10, who obtains information by reason of the counselor's employment as a qualified school guidance counselor shall be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

II. The Elements

In order for the privilege to apply, it would appear the following four elements must exist:

(1) The communication was to a qualified school guidance counselor who has been certified and approved under the standards of the department of education.

(2) The qualifying school guidance counselor obtained the information by reason of his or her employment as a counselor.

(3) A confidential communication was properly entrusted to the counselor by a pupil, the pupil's parent, or the pupil's guardian.

(4) The communication was necessary and proper to enable the counselor to

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perform the counselor's duties as a qualified school guidance counselor.

III. The Presence of Third Parties

Do not permit other students, teachers, or any other persons to participate in a session where you believe the student reasonably expects you to maintain confidentiality. The presence of the third parties may destroy the existence of a privilege.

IV. Protecting the Privilege

A. You must obey a subpoena and appear at the time and place set forth in the subpoena.

B. Notify your principal that you have been subpoenaed.

C. Do not disclose in advance the confidential communications to anyone, absent a written authorization.

D. In court, you are required to answer all questions not pertaining to confidential communications.

E. If confidential information is sought, advise the courts as follows:

> "I cannot answer the question for the reason that it seeks disclosure of confidential communications protected by Iowa Code section 622.10."

F. Let the court decide if the privilege exists. If the court orders you to answer, then you should proceed to answer.

V. General Rules for Testifying

A. Carefully review your file so that you are prepared to answer what is likely to be asked.

B. Listen carefully to the question.

C. Answer only the question that is asked. This is not the time for your Johnny Carson monologue.

D. If you do not understand the question, do not attempt to answer it. Simply tell the attorney you do not understand the question.

E. Do not be afraid to say you do not know the answer to a question or that you are unable to answer a question. The last thing you should be doing is guessing or speculating as to what the answer may be.

F. If an objection is made to a question, do not answer the question until the Court has ruled. The Court will advise if you should proceed to answer the question.

G. Do not attempt to answer a question outside your area of expertise. Tell the attorney you are not qualified to answer the question.

H. Always be polite.

I. Most importantly - tell the truth.

VI. Authorization for Release of Information

A. A student may want you to provide confidential information to his or her attorney or other person. If so, secure a written authorization before providing information. An example of an authorization form is attached hereto.

STUDENT AUTHORIZATION FOR RELEASE OF INFORMATION

Name of Student: _____

Birthdate: _____

Social Security Number: _____ - ____ - _____

AUTHORIZATION

The undersigned hereby authorizes _____ _____, a certified school guidance counselor at _____, to disclose and provide to _____ any and all reports, records, documents, information, and opinions relating to me which are in your care, custody or control.

I understand I have a right to inspect the disclosed information upon request. I also understand that I may revoke this authorization at any time except to the extent that action has already been taken in reliance upon it, by giving written notice to the school guidance counselor named above.

I hereby authorize release of information as indicated above and acknowledge that I have received a copy of this document. This authorization shall be effective for _____ months from the date it is signed.

A photocopy or exact reproduction of this authorization shall have the same force and effect as the original.

_____ _____

Signature of Student Date of Signing

SPECIFIC AUTHORIZATION FOR RELEASE OF INFORMATION
PROTECTED BY STATE OR FEDERAL LAW

I acknowledge that information to be released under this AUTHORIZATION FOR RELEASE OF INFORMATION may include material that is protected by Federal and/or State law applicable to substance abuse, mental health and/or AIDS-related information. I SPECIFICALLY AUTHORIZE release of all confidential information relating to substance abuse, (drug or alcohol information) mental health and/or AIDS-related information to _____.

_____ _____
Signature Date